REMARKS

Claims 1-12 continue to appear in this application for the Examiner's review and consideration. These claims were again rejected under 35 U.S.C. 103(a) as being unpatentable over US patent No. 5,166,412 to Giersch *et al.* (referred to hereafter as "Giersch"), with the office action stating that comparative evidence was not submitted and that the Rule 132 declaration that was submitted is insufficient to overcome the rejection because it does not include comparative tests. Applicant respectfully disagrees with this rejection and the reasoning behind it.

In rejecting claims 1-12, the office action states that the claimed compounds and the Giersch compound are very similar such that "one of ordinary skill would have expected that such a slight variation in the chemical structure would not adversely affect the scent properties of the compound, **absent any evidence to the contrary**"(emphasis added). Applicant respectfully submits that "evidence to the contrary" has been presented in both the specification of the application and the Rule 132 declaration of Pierre-Alain Blanc. In paragraphs [0012] to [0014] of the published application, as well as the Rule 132 declaration, the odor character of the claimed compounds is described as being unique in that a musky and green odor are combined in a single compound. There is no way to determine these nuances of the odor character without evaluating the compounds under conventional perfumery testing conditions. In addition, it is stated that the odor is very diffusive which is rare for a compounds that possess a musky note. Again, this can only be ascertained if the compound is subjected to conventional perfumery testing.

In contrast, the green note and the diffusive character are completely absent from the Giersch compound, which, instead, has been tested to find that it possess a combination of ambrette and fruity-pear character. Again, these properties cannot be ascertained unless conventional perfumery testing is conducted to determine such odor properties. Therefore, the results that are described inherently flow from a skilled artisan such as the inventor or the declarant, Mr. Blanc, after conducting routine tests to evaluate the properties of the compounds. These comparisons provide evidence that clearly shows that the presently claimed compounds are have a completely different odor character and effusiveness that are certainly not obvious or extrapolatable from the Giersch compound. Indeed, there is nothing in Giersch that leads a

skilled artisan to foresee the presently claimed odor character simply based on the structural similarity of the prior art compound.

Furthermore, regarding the statement that "there is no showing of comparative results," Applicant respectfully points out that the Rule 132 declaration does in fact show comparative results of the claimed compounds and the Giersch compound. In comments #3 and #6 of the declaration, the odor characters of the claimed compounds and the Giersch compound are clearly described, respectively, as follows:

> "The present invention relates to compounds that when added to a perfuming composition or perfume, the compound provides a musky-green odor character note. In particular the green character imparted by these compounds is a fresh note having a Galbanum (see the attached description of the Galbanum odor) and green-pear's peel connotation. Furthermore, to the best of my knowledge the invention compound is unique in the sense that no other known compound combine a musky-ambrette note with a green note. For the sake of clarity it can be useful to mention that by green character it is intended in the art a note having a typical foliage/herbaceous and acidic character." (Comment #3)
>
> The prior art compound 4-(3,3-dimethyl-l-cyclohexyl)-2,2-dimethyl-3 possess musky odor as well as a floral undernote and a fruity character of the pear type, i.e. has a combination of the ambrette and fruity-pear character. The musky character becomes even more important in the case of the optically active compounds. For the sake of clarity it can be useful to mention that by fruity character it is intended in the art a note having a typical sweet character." (Comment #6)

It is well known in the art that the odor character of a compound is analyzed by conventional perfumery testing using the same standards and thus the results stated in the Rule 132 declaration are truly comparative results. Such testing conditions well known and appear in the literature. In support of this point, applicant submits herewith a copy of certain pages from a handbook entitled "The H&R Book of Perfume." This document illustrates that detailed instructions are not required for a skilled artisan to conduct comparison tests. And while it does not mention exactly how to perform such tests, it does describe how a perfume is created, and this follows a similar if not identical procedure to what is done during comparison testing.

For these reasons, there is no need to specifically mention common testing protocols in the present Rule 132 declaration, as Mr. Blanc is an experienced perfumer who knows how to test such compounds based on his 26 years+ experience in the field. It is also important to note

that there is nothing critical or unusual in conducting these tests that need to be described in his declaration (or in the specification of the present application) as there would be if the comparison was made based on the synthesis or other comparison where the methods steps being followed have to be controlled with only one variable changed to perform a proper comparison. Here the only variable that is changed is the compound so that its odor character can be compared to that of the other compound, and a skilled artisan is well aware of how to conduct such comparison tests. Even if they were not personally aware of such testing, the literature citation teaches what they would need to do. Therefore, the Rule 132 declaration provides factual evidence, instead of opinion testimony, and should be given due weight in evaluating the patentability of the claims.

It also is important to remember that, as disclosed in the declaration, structure-activity relationships analysis or analogy does simply not work for perfumes. The art is replete with references showing that if one structure provides a particular fragrance, a similar structure does not provide the same properties. This is particularly true for the quality and the intensity of the notes. To this end, the cited reference is nothing more than a starting point for research to identify additional useful compounds. In contrast, it is the present invention that discovered such compounds, and a skilled artisan would be aware of the significance of the odor characters for such compounds as well as their substantial differences compared to prior art compounds, such as those of Giersch based on the comparative evaluations that are made in the specification and Rule 132 declaration that have been provided for the present invention. Since this evidence supports the patentability of applicant's claims, the rejections based on Giersch have been overcome and should be withdrawn.

As further support of this point, applicant submits herewith an article by R. Araneda et al. entitled "A pharmacological profile of the aldehyde receptor repertoire in rat olfactory epithelium," *J. Physiol* 555.3 (2004) pp 743-756, that discusses this from a different perspective. In page 748 of that document (copy transmitted herewith), closely related molecules, such as those that are only different in the carbon atom numbers and presence/absence of double bonds, are shown to be distinguishable by olfactory receptors, and to thus have different odor properties. Under the subtitle "A receptor for aldehydes can discriminate among closely related molecules" the article states:

"cells expressing OR-I7 responded to octanal and other aldehydes with 7- to 11-carbon backbones (30 Am, Fig. 2Aa), but did not respond to the shorter(<7) or longer (>11) aldehydes (Table 1)" (showing different carbon atom numbers are discriminated by the olfactory receptor)

and

"The unsaturated aldehydes trans-2-octenal and 2,4-octadienal, and the unsaturated-branched aldehydes citral and citronellal, differ only by the presence of one extra double bond, yet several cells were able to distinguish between these aldehydes..." (showing one double bond is discriminated by the olfactory receptor)

These statements support applicants' position that structure-activity relationships analysis or analogy does simply not work for perfumes.

Accordingly, it is believed that the entire application is now in condition for allowance, early notice of which would be appreciated. In the event that the Examiner does not agree that all claims are now allowable, a personal or telephonic interview is respectfully requested to discuss any remaining issues in an effort to expedite the eventual allowance of this application.

Respectfully submitted,

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Date

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